

1 ERSKINE & TULLEY
A PROFESSIONAL CORPORATION
2 MICHAEL J. CARROLL (ST. BAR #50246)
220 Montgomery Street, Suite 303
3 San Francisco, CA 94104
Telephone: (415) 392-5431
4 Facsimile: (415) 392-1978

5 Attorneys for Plaintiffs

6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 BOARD OF TRUSTEES OF THE NORTHERN CALIFORNIA) NO. C 07 3207 JL
FLOOR COVERING INDUSTRY WELFARE FUND; STEVE)
12 HAVENS, TRUSTEE,)
13 Plaintiffs,) COMPLAINT
14 vs.)
15 BEVIL'S FLOOR SERVICE, INC., a California)
corporation,)
16 Defendant.)
17

18 Plaintiffs complain of defendant and for a cause of action
19 alleges that:

20 1. Jurisdiction of this Court is founded upon Section 301
21 (c) (1) of the National Labor Relations Act of 1947 [29 U.S.C. §185(a)]
22 and Section 502 of the Employee Retirement Income Security Act of
23 1974, said Act being hereinafter referred to as "ERISA" (29 U.S.C.
24 §1132), in that defendant has violated a collective bargaining
25 agreement and certain Trust Agreements, thereby violating the
26 provisions of ERISA and the provisions of the National Labor Relations
27 Act of 1947. This action is also brought pursuant to the Federal
28 Declaratory Judgment Act (28 U.S.C. §2201 et seq.) in a case of actual

COMPLAINT

1 controversy between plaintiffs and defendant, and for a Judgment that
2 defendant pay fringe benefit contributions in accordance with its
3 contractual obligations.

4 2. Plaintiffs, Boards of Trustees of the Northern
5 California Floor Covering Industry Welfare Fund (hereinafter "Trust
6 Fund"), named in the caption are trustees of employee benefit plans
7 within the meaning of §§3(1) and (3) and §502(d)(1) of ERISA, 29
8 U.S.C. §1002(1) and (3) and §1132(d)(1), and a multiemployer plan
9 within the meaning of §§3(37) and 515 of ERISA, 29 U.S.C. §§1002(37)
10 and §1145. Plaintiff Steve Havens is a trustee. Said Trust Funds are
11 authorized to maintain suit as independent legal entities under
12 §502(d)(1) of ERISA, 29 U.S.C. §1132(d)(1).

13 3. Plaintiffs are informed and believes and thereupon
14 alleges that defendant, BEVIL'S FLOOR SERVICE, INC., resides and does
15 business in Morgan Hill, California. The collective bargaining
16 agreement was entered into in San Jose, CA. Performance of the
17 obligations set forth therein is in this judicial district.

18 4. Each and every defendant herein is the agent of each
19 and every other defendant herein. Defendants and each of them are
20 engaged in commerce or in an industry affecting commerce.

21 5. At all times pertinent hereto, defendant was bound by
22 a written collective bargaining agreement with Carpet, Linoleum & Soft
23 Tile Workers, Local 12, a labor organization in an industry affecting
24 commerce. The aforesaid agreement provide that defendant shall make
25 contributions to the TRUST FUND, on behalf of defendant's employees
26 on a regular basis on all hours worked, and that defendant shall be
27 bound to and abide by all the provisions of the respective Trust
28 Agreement and Declarations of Trust of said TRUST FUNDS (hereinafter

1 the "Trust Agreement").

2 6. The Trust Fund relies upon a self reporting system.
3 Defendant has unique knowledge of the amounts of contributions that
4 it is liable to pay each month, and has a fiduciary obligation to
5 accurately report the amount to the Trust Fund.

6 7. Defendant has breached both the provisions of the
7 collective bargaining agreement and the Trust Agreement above referred
8 to by failing to complete and send in monthly reports and/or to pay
9 all moneys due thereunder on behalf of defendant's employees to the
10 TRUST FUND. Said breach constitutes a violation of ERISA (29 U.S.C.
11 1002, et seq.) and of the National Labor Relations Act of 1947.

12 8. Defendant has failed and refused to pay in a timely
13 manner since May 2006. Pursuant to the terms of the collective
14 bargaining agreement there is now due, owing and unpaid from defendant
15 to the TRUST FUND contributions for hours worked by covered employees
16 for the months of May 2007; Liquidated damages and interest are
17 specifically provided for by said agreements and are due and owing.
18 The total amount due is unknown at this time; additional monthly
19 amounts may become due during the course of this litigation and in the
20 interest of judicial economy, recovery of said sums will be sought in
21 this case. Interest is due and owing on all principal amounts due and
22 unpaid at the legal rate from the dates on which the principal amounts
23 due accrued.

24 9. Demand has been made upon said defendant, but defendant
25 has failed and refused to pay the amounts due the TRUST FUND or any
26 part thereof; and there is still due, owing and unpaid from defendant
27 the amounts set forth in Paragraph 8 above.

28 10. An actual controversy exists between plaintiffs and

1 defendant in that plaintiffs contend that plaintiffs are entitled to
2 a timely monthly payment of trust fund contributions now and in the
3 future pursuant to the collective bargaining agreement and the Trust
4 Agreement, and defendant refuses to make such payments in a timely
5 manner.

6 11. The Trust Fund does not at this time seek to audit the
7 books and records of defendant. The only issue raised in this
8 complaint is defendant's failure to complete and file voluntary
9 monthly reports and pay the contributions due. The Trust Fund seeks
10 to obtain a judgment for any outstanding delinquent contributions
11 based on defendant's reports and to reserve the right to audit
12 defendant for this or any other unaudited period.

13 12. The Trust Agreement provides that, in the event suit
14 is instituted to enforce payments due thereunder, the defendant shall
15 pay court costs and reasonable attorneys' fee. It has been necessary
16 for plaintiffs to employ ERSKINE & TULLEY, A PROFESSIONAL CORPORATION,
17 as attorneys to prosecute the within action, and reasonable
18 attorneys' fee should be allowed by the Court on account of the
19 employment by plaintiffs of said attorneys.

20 WHEREFORE, plaintiffs pray:

21 1. That the Court render a judgment on behalf of plaintiffs
22 for all contributions due and owing to the date of judgment based upon
23 unaudited reporting forms, plus liquidated damages provided for by the
24 contract, interest at the legal rate, reasonable attorneys' fees
25 incurred in prosecuting this action and costs.

26 2. That the Court enjoin the defendant from violating the
27 terms of the collective bargaining agreements and the Trust Agreement
28 for the full period for which defendant is contractually bound to file

1 reports and pay contributions to the TRUST FUND.

2 3. That the Court reserve plaintiffs' contractual right to
3 audit defendant for months prior to judgment, and in the event of such
4 audit, collect any additional sums which may be due.

5 4. That the Court retain jurisdiction of this cause pending
6 compliance with its orders.

7 5. For such other and further relief as the Court deems
8 just and proper.

9 DATED: June 18, 2007

ERSKINE & TULLEY
A PROFESSIONAL CORPORATION

11 By: /s/Michael J. Carroll
12 Michael J. Carroll
13 Attorneys for Plaintiffs
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28